

Date: 2/19/2008

Project: Proposal by Bernard E. Davis, Jr. to Purchase 100% of the stock in St. Joseph Nursing Home Inc. Proposal for a new entity named St. Joseph's Operating Company to lease operations from St. Joseph Nursing Home and operate the existing facility.

Prepared by: Phyllis Powell, Certificate of Need Manager
Larry Carbonneau, CPA, Health Care Financial Analyst

Directly Affected Party: None

Recommendation: APPROVAL

Estimated Capital Expenditure per Applicant	\$ 850,000
NF Component - \$850,000	
RCF Component - \$0	
Approved Capital Expenditure per CON	\$ 850,000
NF Allocation - \$850,000	
RCF Allocation -\$0	
Maximum NF Contingency per CON \$	\$ 0
Maximum RCF Contingency	\$ 0
Total Approved Capital Expenditure with Contingency	\$ 850,000

The following report is the Certificate of Need Unit's preliminary analysis and recommendations regarding the above-referenced proposal.

INTRODUCTION

I. Project Description

A. From Applicant

The applicant provided the following information regarding the project:

“The project will consist only of purchasing 100% of the issued and outstanding shares of Capital Stock in the Corporation. There are no plans to change any preventive services. “

“The project shall remain in St. John Valley, Aroostook County, Maine and the physical location of the Nursing Home/Corporation shall remain at 426 U.S. Route #1, Frenchville, Maine as it has been in varying capacities since 1967. The purchase of the Stock will ensure the continuation of the Corporations operations in Frenchville. The importance cannot be underestimated as the Corporation currently services 43 residents with various medical needs, employs 100 people from the small Northern Maine Community and addresses the needs of the family members who wish to place their loved one in close proximity to their homes.”

“The change of ownership will have the effect of integrating the Corporation into an organization that currently employs nearly 300 plus employees, cares for 300 residents within the State of Maine and has real estate holdings within and out of the borders of Maine. The net effect is increased ability to provide logistical support, training and services to the residents and employees sometimes not available to stand alone organizations.”

“There are additional benefits including satisfying a demand for local Nursing Home care in the St. John Valley region of the State .”

“The purchase is consistent with the objectives of the State of Maine State Health Plan, which ensures the continued availability of Nursing Home Care to the people of St. John's Valley. It also ensures there will be no disruption in the care of the current residents for whom the Corporation has cared for over many years.”

B. CONU Discussion

i. Criteria

The following criterion is applicable to this section:

Whether the services affected by the project will be accessible to all residents of the area proposed to be served. Accessibility is determined through analysis of the area including population, topography and availability of transportation and health services. [See Criterion C.]

ii. Analysis

The scope of this project is limited to purchasing the stock of the facility, As such, reviews of this type of transaction do not usually consider accessibility of services. However, because the current owner has considered selling the facility in recent years there is a need to ensure contingencies related to ownership succession. Service accessibility is important. The purchase of the stock of the facility by Bernard E. Davis, Jr. will ensure that the facility will remain in the region.

iii. Conclusion

The services provided by St. Joseph's nursing home are needed in the community. Services will remain the same. The services affected by the project will remain accessible to all residents of the area proposed to be served.

II. Profile of the Applicant

A. From Applicant

"The applicant Bernard E. Davis, Jr. owns 10 Level IV PNMI Assisted Living facilities in the State of Maine. The following are a list of facilities Mr. Davis owns:

- Pleasant Meadows Estates –Dover Foxcroft, Maine
- Hilltop Manor-Dover Foxcroft, Maine
- Tissues Country Estates, Inc. –Athens Maine
- Davis Estates- Machias, Maine
- Limestone Manor- Limestone, Maine
- The Lodges Care Center, Inc. (25% Owned by Chad A. Cloutier)- Sanford, Maine.
- Seven Tree Manor, Inc.- Union, Maine
- Bayview Manor- Searsport, Maine
- Hall Dale Manor- Farmingdale, Maine
- Capitol City Manor- Augusta, Maine"

"Each of the above-named facilities are licensed Level IV PNMI facilities. Each facility is currently licensed in good standing with no directed plan of corrections, sanctions or citations in place. Each facility is managed by a license Residential Care Administrator duly licensed by the Maine Nursing Home Administrators Board."

"The Applicant St. Joseph's Operating Company, Inc. will be overseen by a Board of Directors who will ensure the officers of the applicant are in compliance with goals of the applicant."

The Applicant's Ownership Structure:

<u>Applicant Name</u>	<u>Percentage</u>	<u>Vested Owner</u>
<u>St. Joseph Nursing Home, Inc. (Corporation)</u> (proposed)	100%	Bernard E. Davis Jr
<u>St. Joseph's Operating Company, Inc.</u>	25%	Jonathan Roy
	20%	Chad A. Cloutier
	55%	Bernard E. Davis Jr

CONU Discussion

i. Criteria

Relevant criteria for inclusion in this section are related to the needed determination that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards;

The following nursing facility-specific review criteria are relevant to this section:

Whether the quality of any health care provided by the applicant in the past meets industry standards. [See criterion G.]

Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project. [See Criterion H.]

ii. Analysis

The applicant filed a copy of the current facility license. A survey of the facility on June 21, 2007, found it was not in substantial compliance with Federal participation requirements for nursing homes. The survey found the most serious deficiencies to be isolated deficiencies that constituted no actual harm, potential for more than minimal harm, but not constituting immediate jeopardy.

The follow-up survey on August 13, 2007, showed that the deficiencies had been corrected. The facility was found to be in substantial compliance with the rules. All Statements of Deficiencies are on file with the Department and may be viewed on the Internet. In general, the quality of care at this facility meets industry standards.

The proposed operators are associated with 10 Level IV PNMI Assisted Living facilities in the State of Maine. These facilities have good records with the Department for providing good care and are currently not in violation of any standards of care.

Of concern, however is the lack of experience within the proposed ownership regarding operating a nursing level facility. The other members of the ownership group have not owned a nursing facility previously. A mitigating factor is that Jonathan Roy will be part of the ownership group of the operating company and holds an administrators license for nursing homes.

iii. Conclusion

CONU recommends that the Commissioner find that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

III. Capital Expenditures & Financing

A. From Applicant

"This project consists of buying stock and changing ownership. The cost of the stock is identified in the Purchase and Sale attached as Attachment 3. This cost will not be reimbursed by the State of Maine and will not change the rate of reimbursement currently set by the Maine Department of Finance and Audit. The cost is appropriate and the applicant has the financial means to implement the purchase. The purchase will not impact the financial feasibility of the facility."

"An Act to Save Medicaid Funds by Expanding The Ability of the Department of Human Services to Recover Funds from Prior Owners:

- The former provider St. Joseph Nursing Home, Inc. and Clovis Daigle do not owe the State of Maine any debts;
- Clovis Daigle has signed the Purchase and Sale and has agreed to pay any debts arising from the submission of the 2007 cost report to the Division of Audit, if any.
- To be sure, Mr. Daigle will provide 5% or \$50,000.00 of the Medicaid reimbursement for 2007 into an escrow account to cover any unapproved costs for 2007."

- (ii) "The proposed purchase of stock will not trigger the computation of recapture of depreciation."

"St. Joseph Nursing has always met its licensure requirements in regards to Medicaid and Medicare certifications. The license requirements will remain the same and will be complied with in the same manner. St. Joseph is dually certified and has historically achieved all Medicaid/Medicare standards. The sale of the stock will trigger a change in Medicaid/Medicare numbers for reimbursement and compliance purposes. Once this Application is approved, the Operating Company and the Corporation will undertake whatever steps necessary to maintain compliance with the Medicaid/Medicare standards."

"No physical construction will be required for this applicant[ion]. Therefore there will be no change in the physical building or its energy consumption, including heat loss, fuel costs, or reduction in overall energy sustainability."

B. CONU Discussion

i. Criteria

The following review criterion is applicable to this section:

That economic feasibility of the proposed services is demonstrated in terms of:

1. The capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
2. The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules

Whether the project is financially feasible in both an intermediate and long-term time frame. [See criterion E.]

Whether the project would produce a cost benefit in the existing health care system of the State and the area in which the project is proposed. [See criterion F.]

ii. Analysis

Because this transaction is being executed as a purchase of the stock in an existing corporation, there is no depreciation recapture. Additionally, as a stock purchase, the cost of purchasing the stock is not a recoverable cost. The estimated purchase price of the stock is \$850,000 which will not be reimbursable as an expense. This expense will be borne by Mr. Davis as a personal expense.

A financial proforma provided with the application indicates that the operating margin is expected to be \$82,000 or 2.7%. Estimated cash flow for the assumed debt is expected to be approximately 2.0 with \$200,000 of depreciation and amortization. These are within industry standards. The financial proforma presented to CONU indicates that staff changes are not planned.

The operating lease is structured for 5 years in compliance with the State of Maine provision for reimbursement.

The facility is fully licensed and certified to participate in MaineCare and Medicare federal reimbursement programs. This project appears to comply with rules and regulations of local, state and federal agencies. There is no information that indicates that the project will not comply.

iii. Conclusion

CONU recommends that the Commissioner find that the economic feasibility of the proposed services is demonstrated in terms of:

1. The capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
2. The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;

IV. Needs to be Met

A. From Applicant

The applicant provided the following:

“As indicated in prior sections, the purchase of Clovis Daigle’s stock will ensure local seniors and the aging population of Aroostook County will have adequate options when the time comes for them to pursue Nursing Home care.”

- (i) “The primary service area will continue to be Northern Aroostook County, Maine, specifically the communities of the St. John Valley. St. John Valley includes, but is not limited to, the Towns of Eagle Lake, Fort Kent, Frenchville, Van Buren, and Madawaska to name of a few.”
- (ii) “The Population served will continue to be primarily MaineCare residents who currently make up 38 of 43 (89%) of St. Joseph’s population. The rest of the resident population is comprised of private/self pay 4 of 43 (10% +/-) and 1 of 43 Veteran’s Administration insurance (VA) (03%). Historically, St. Joseph has cared for residents who receive Medicare and/or other private insurance to pay for their care. St. Joseph will continue to received recipients of Medicare, MaineCare, private insurance, VA and self-pay as needed.”
- (iii) “The facility has historically operated at 98-99% utilization.”
- (iv) “The current waiting list consists of a total of 70 people who have placed their name on a list requesting residency at St. Joseph. There are currently 7 names (4 women and 3 Men) who have requested immediate residency. Those names are excluded to maintain confidentiality. The list is updated as required. Because of continued high utilization there are no rooms available at St. Joseph.”
- (v) “A recent trend that appears to be present in the Northern Aroostook County area is the reintegration of long time residents who had moved away and decided to return for retirement, work, and family or simply for their long term care needs. It is well documented that the “baby boomers” are approaching their senior years and will need appropriate resources to care for them as they age.”
- (vi) “According to the Northern Maine Development Commission in conjunction with the University of Southern Maine, the population of St. John Valley is expected to increase in a similar fashion as the rest of the State: a steady out-migration of youth and working age individuals, we continue to be a graying community with a median age increase.”

“Attachment 6 represents the information gathered by Northern Maine Development Commission:”

- 1) "A projected increase in total population numbers, among all age groups, between the years 2010 and 2015. The out-migration will level off and will shift toward and increase. This increase is expected on the next census."
- 2) "An ongoing increase in the median age. Between 1990 and 2000 the median age in the greater Madawaska region went from 37.9 to 45.96 and from 36.2 to 42.2 in greater Ft. Kent area. The areas of Ft. Kent and Madawaska report a higher median age than that of all Aroostook County which reported a median age of 40.7 years old."
- 3) "Most importantly for St. Joseph and the pending analysis is that there is a swelling of individuals within the age of 65 or older. Seniors aged 80-plus from the communities of Eagle Lake, Fort Kent, Van Buren, Frenchville and Madawaska, St. Francis and St. Agatha are expected to continue to increase in numbers (from 830 total in 2005 to 885 total in 2010 and 894 in 2015). In those same communities the senior population 65 to 79 will increase in numbers (from 1993 total in 2005 to 2136 in 2010 and 2581 total in 2015)."

See Attachment 6.

Reported payer mix is as follows:

MaineCare	11,336	71%
Medicare	2,391	15%
Private	2,051	13%
Managed Care	<u>307</u>	<u>2%</u>
Total	16,065	88%

"In 2006, the nursing facility had an occupancy level of 88% March and April 2006 were affected by the survey results discussed previously and not considered would have caused an occupancy average of 90%. December 2006 saw an occupancy level of 97.7%. The MaineCare % of the occupied beds was 70.47%. The Residential Care facility was operating at 92% occupancy level in 2006. The MaineCare % of occupied beds was 94%."

B. CONU Discussion

i. Criteria

- C. That there is a public need for the proposed services as demonstrated by certain factors, including but not limited to:
1. Whether, and the extent to which the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

2. Whether the project will have a positive impact on the health status indicators of the population to be served;
3. Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
4. Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

The following criteria are applicable:

Whether the project will substantially address specific problems or unmet needs in the area to be served by the project. [See criterion A.]

Whether the project will have a positive impact on the health status indicators of the population to be served. [See criterion B.]

ii. Analysis

The applicant presented the CONU with information regarding the communities served by this facility. The information presented indicated that in the 10 year period from 1990 to 2000 the number of individuals in the area of over 7,000 residents grew to 1,213. This is an increase of nearly 10% while the area itself decreased in population by 4.5% during that time. Likewise, the neighboring Madawaska area showed a similar trend. The area had a total population decrease of 7% while the number of residents over 65 increased by 300 residents at a rate of greater than 29%.

The facility has historically operated at 98-99% utilization.

The nature of the transaction will not address specific health problems in that this is the acquisition of a facility.

iii. Conclusion

CONU recommends that the commissioner determine that there is a public need for the proposed services

V. Alternatives Considered

A. From Applicant

"The St. Joseph Nursing Home operates with high utilization of its beds and continued demand for its services. Clovis Daigle is now 85 years old and has elected to semi-retire. Because Clovis has elected to semi-retire the direction and leadership of the facility must also change to allow Clovis his well-deserved rest from the daily decision making process that is required of an owner and administrator of a nursing home this size."

"This approval of this application is vital to preserving the consumer preference in the St. John Valley. The entire long term care community will embrace the sale of St. Joseph and applaud the continued availability of St. Joseph as a health care provider with a strong reputation in the community."

B. CONU Discussion

i. Criteria

Relevant criteria for inclusion in this section are that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by: the impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care. The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and the likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available. Additionally, a further criterion is whether there are less costly or more effective alternate methods of reasonably meeting identified health service needs of the project. [See criterion D.]

ii. Analysis

The proposed services are consistent with the orderly and economic development of the area because an in-state operator of residential care facilities will assume operations. The proposed operator is capable of assuring continued operations. Since the transaction is structured as a stock purchase, the transaction reduces the financial impact of the purchase on the MaineCare budget. Additionally, there is a demonstrated need for these services in this area as reflected in the occupancy rate. It is important to ensure the transition of a facility to assure that services will continue. Also, the new owner has additional financial resources to draw on in case of a crisis or emergency, or shift in market trends.

iii. Conclusion

CONU recommends that the Commissioner determine that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State.

VI. State Health Plan

A. From Applicant

"In regards to the State Health Plan, the present proposal does not add any additional cost to the current health plan. This transaction is Medicaid Neutral and will not alter the licensed number of Nursing Home Beds."

B. CONU Discussion

i. Criterion

Relevant criterion for inclusion in this section are specific to the determination that the project is consistent with the State Health Plan. (See Criterion E.)

Additional criterion includes the special circumstances of health care facilities with respect to conserving energy;

ii. Analysis

This project does not conflict with the State Health Plan, and will result in the continued operation of the facility.

iii. Conclusion

CONU recommends the Commissioner determine that the project is consistent with the State Health Plan as demonstrated by the applicant.

VII. Outcomes And Community Impact

A. From Applicant

“Staffing will remain the same as it currently exists at St. Joseph. Without the allowance of transferred ownership the employees of St. Joseph could risk losing their jobs and the St. John Valley could risk the loss of necessary health care services. Currently, St. Joseph employs 100 health care workers at its facility and provides for 43 residents.”

“The proposal to purchase the stock in St. Joseph will not negatively impact existing services, reduce the provision of health services within the total system, would not attract or distract manpower resources from other area provides, will continue the same referral patterns, and will not increase the cost to any community support services such as police, fire, ambulance, roads or waste handling.”

B. CONU Discussion

i. Criterion

Relevant criterion for inclusion in this section are specific to the determination that the project ensures high quality outcomes and does not negatively affect the quality of care delivered by existing service providers;

ii. Analysis

The project does not entail any changes to the applicant's NF care program. Indeed, it is expected

that the current staff will be retained.

Mr. Davis has proven able to provide safe care at the assisted living level and is hiring a licensed administrator to operate the facility.

iii. Conclusion

CONU recommends that the Commissioner determine that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

VIII. Service Utilization

A. From Applicant

- (i) See Attachment 5 – For data regarding the utilization of services at St. Joseph for 2005, 2006 and 2007.
- (ii) See Attachment 5 – For Quality Assurance Plan currently in place at St. Joseph.

B. CONU Discussion

i. Criterion

Relevant criterion for inclusion in this section are specific to the determination that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum. (See Criterion G)

ii. Analysis

The project does not include any new beds. The project does not include changes to its administrative staff or programs. A new administrator, Jonathon Roy, will be named. Capacity of the area will not be affected by the proposed transaction.

iii. Conclusion

The project proposes a change in ownership of a facility that does not result in increased utilization. CONU recommends that the Commissioner determine that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

IX. Timely Notice

A letter of intent was filed October 4, 2006.

The application was provided to CONU on November 1, 2007.

Notice regarding the beginning of a review of this project was in the Kennebec Journal on November 10, 2007, and the Bangor Daily News on November 9, 2007.

A public information meeting was held at the facility on November 16, 2007.

No members of the public attended nor provided comment. All appropriate notice requirements have been met.

X. Findings and Recommendations

Based on the preceding analysis, the CONU makes the following findings and recommendations:

- A. The proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards;.
- B. That economic feasibility of the proposed services is demonstrated in terms of:
 - 1. The capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
 - 2. The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;
- C. That there is a public need for the proposed services as demonstrated by certain factors, including but not limited to:
 - 1. Whether, and the extent to which the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
 - 2. Whether the project will have a positive impact on the health status indicators of the population to be served;
 - 3. Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
 - 4. Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.
- D. That the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:
 - 1. The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;
 - 2. The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and
 - 3. The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available;

In making a determination under this subsection, the Commissioner shall use data available in the State Health Plan under section 253, data from the Maine Health Data Organization established in chapter 1683 and other information available to the Commissioner. Particular weight must be given to information that indicates that the proposed health services are innovations in high quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

The decision must be based solely on a review of the record. The Commissioner shall approve an application if she determines that the project meets the criteria set forth above, and:

- E. That the project is consistent with the State Health Plan;
- F. That the project ensures high quality outcomes and does not negatively affect the quality of care delivered by existing service providers; and
- G. Does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

Based upon the findings cited above, the CONU recommends **APPROVAL** of this project.